



Order Decision

Site visit made on 24 April 2018

by **Jean Russell MA MRTPI**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 07 August 2018

Order Ref: ROW/3182542

- The Order is made under section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981.
- The Order is known as the East Riding of Yorkshire Council (Watton Footpath No. 11 and Bridleway No. 19) Public Path Diversion and Definitive Map and Statement Modification Order 2016.
- The Order is dated 18 October 2016 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when East Riding of Yorkshire Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: the Order is confirmed.

PRELIMINARY MATTERS

The Order

1. The Order is made under s119(1) of the Highways Act 1980 (HA80) because it appears to the Council that it is expedient that parts of the lines of Watton Footpath No. 11 (the footpath) and Watton Bridleway No. 19 (the bridleway) should be diverted in the interests of the public.
2. In the event that the diversion is found to meet criteria set out under s119, as described below, the Order provides for modification of the Definitive Map and Statement (DMS), the legal record of public rights of way.
3. The bridleway starts at the northern end of Beswick Footpath No. 18 (FP18), point C on the Order map. The route follows a north easterly line along the east bank of Beverley and Barmston Drain, and to the west of the River Hull to join Brandeston Bridleway No. 23 (BR23).
4. It is proposed to divert part of the bridleway by:
 - Extinguishing the line between points C-D on the Order map, being a line across Watton Beck on the straight north easterly alignment of the way¹;
 - Creating a line from points C-F-G-D, so that the bridleway will lead north east from point C to the south bank of Watton Beck; north west along the bank; north east over Watton Beck Bridge; and then south east along the north bank of Watton Beck back to the north easterly line of the way.
5. The footpath leads from the bridleway to Watton Footpath No. 15 (FP15) on an essentially northern alignment. It is proposed to divert part of the footpath by:
 - Extinguishing the line from points A-B on the Order map, being a line which starts on the bridleway a few metres north east of point D, leads north west

¹ Watton Beck is perpendicular to and runs to the River Hull over Beverley and Barmston Drain

and then north east across Beverley and Barmston Drain, northerly on the west bank of Starberry Drain for some 160m, north east over Starberry Drain, and then north west on the east bank of Starberry Drain.

- Creating a line from points E-B, with E being just south of point G, so that the footpath will start at the end of Watton Beck Bridge on the diverted part of the bridleway, lead north easterly to the west of Beverley and Barmston Drain and around the southern end of Starberry Drain, and then run continuously, on an essentially northern alignment, along the east bank of Starberry Drain.

The objector

6. The outstanding objection to the Order is made by a member of a family, on their behalf, who have farmed land under tenancy to the north of Watton Beck and west of the River Hull since 1959. They own and occupy Three Jolly Tars farmhouse, which is to the south of the Order land and accessed from Wilfholme Road².
7. Watton Beck Bridge not only carries the diverted part of the bridleway between points F and G; it also provides the objector with access to the fields that they farm beside the routes. Separate lanes to the southern end of the bridge provide the Objector with vehicular access across their land and property.

Site visit

8. I carried out an unaccompanied site inspection of the proposed routes on 24 April 2018. I was unable to walk along the existing routes since these have ceased to exist on the ground, but I was able to see the land in question and have sufficient evidence before me to make a decision.

Legal status

9. As the objector notes, and for reasons explained further below, the bridleway and footpath have not been useable or used on their original lines for over 30 years. The proposed parts of the routes exist but are not recorded on the DMS as public rights of way, and are not said to be unrecorded public rights of way.
10. The objector suggests that their family has erected notices to prevent public use of the proposed routes, in accordance with their rights under s31 of the HA80 to protect their land and prevent trespass. They have provided copies of notices, and I saw one on the Watton Beck Bridge.
11. However, s31 is not relevant because it provides for the dedication of ways over land to be presumed after public use for 20 years. The Order is not made on the basis that evidence has been discovered pertaining to public use or deemed dedication; the Council seeks to divert the bridleway and footpath for expediency reasons under s119. I am satisfied that I could confirm the Order, subject to my findings on the main issues.

MAIN ISSUES

12. In accordance with s119 of the HA80, the main issues are:
 - a) Whether it is expedient that parts of the ways should be diverted in the interests of the public;
 - b) Whether the ways will “not be substantially less convenient to the public” as a consequence of the diversion;

² There is no public access to FP18 or the bridleway from Wilfholme Road.

- c) The effect of the diversion on public enjoyment of the ways as a whole, with regard to the condition of the ways;
- d) The effect that the coming into operation of the Order would have as respects other land served by the existing right of way – and that the new ways created by the Order would have as respects the land over which public rights of way is so created, taking into account the provisions as to compensation;
- e) Any material provision of a rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes the land over which the Order would create or extinguish public rights of way; and
- f) The points of termination of the ways.

REASONS

Expedient in the interests of the public

- 13. The Council made the Order because, as they described it, substantial alterations were carried out in the 1980s to Watton Beck and Beverley and Barmston Drain, which resulted in the bridleway and footpath being obstructed between points C-D and A-B respectively, and the proposed routes being created on the ground. Orders were not made at the time to divert the ways or modify the DMS.
- 14. The objector has given a broader history of works in respect of the River Hull and associated watercourses since 1963. They have shown that the Yorkshire Water Authority carried out an improvement scheme between 1985 and 1987 so as to rebuild the flood banks on the western side of the River Hull. The scheme largely affected land to the south of the Order routes – alongside FP18 – but also the land up to and north of Watton Beck.
- 15. Watton Beck Bridge and adjoined water works were built as part of the 1985 scheme, and so it is likely that the structures which carried the bridleway over Watton Beck between points C and D, and carried the footpath over Beverley and Barmston Drain and Starberry Drain, were demolished at around the same time.
- 16. If I do not find it expedient to divert the bridleway and/or footpath, the DMS would still record public rights of way which cannot be exercised. The Council would need to re-appraise if not re-construct the routes at public expense, delaying the ability of the public to use rights of way in this area.
- 17. For the reasons given by the Council, I conclude that it is expedient to divert the bridleway and footpath in the interests of the public; the evidence of the objector does not show otherwise.

Substantially less convenient to the public

- 18. Where diversion occurs on the ground before an order is made, the convenience of the existing and proposed routes can be equitably compared by disregarding any 'temporary circumstances' preventing or diminishing the use of the former.
- 19. The bridleway and footpath ceased to be passable on their original lines some 30 years ago as a result of works including the demolition and replacement of Watton Beck Bridge. For the purposes of this decision, I shall treat the works as 'temporary circumstances' and assess the convenience of the original routes as though they are unobstructed and maintained to a suitable standard.

20. The proposed parts of the bridleway and footpath are longer than the original, but not substantially so. The objector has not expressed any concerns regarding the length, width or alignment of either proposed route.

Flood risk

21. The objector is highly concerned that the bridleway and footpath cross land which is in a flood plain. The objector has described several sources of flood risk to the Order lands, including breach and/or overtopping of the River Hull flood defences, and fluvial flooding from other watercourses.
22. Many public rights of way cross flood risk areas. The proposed parts of the bridleway and footpath have been and will remain subject to ponding and indeed closure at times of flooding, but the objector's own evidence suggests that such obstructions would be temporary. There is no evidence that the routes have been or will be flooded so seriously and often that they would not be safe for public use.
23. It can also be anticipated that the ways would be prone to flooding whether they are diverted or not. It is not shown that the bridleway and footpath are more likely to be flooded on the proposed compared to the existing lines – and the opposite may be true. The 1985 scheme and other works were seemingly undertaken to reduce the risks and impacts of flooding in this area.
24. Watton Beck Bridge is further from the River Hull than the original bridge on the line between points C and D. It is proposed to divert the footpath so that it skirts around rather than crosses Beverley and Barmston Drain and Starberry Drain – which should make it safer for the public to pass along the path.

The condition of the routes

25. The objector suggests that Watton Beck Bridge has potholes but there is no evidence before me that the structure is in urgent need of repair or replacement. My impression was that the bridge is of solid construction, and I also saw that it is designed for public safety with rail enclosures on each side.
26. Off the bridge, the proposed bridleway and footpath are largely unmade and therefore grassed like the pasture that they cross. The ways could be trampled by livestock as well as walkers and, in the case of the bridleway, riders and cyclists. I also understand that heavy machinery may be used on the land in connection with the farm and by organisations such as the Environment Agency.
27. I saw tractor marks on the bridleway, and it is plain that activity on and around both Order routes could cause them to become churned up. They will be puddled and boggy during and after periods of inclement weather – and during and after floods. I agree with the objector that members of the public, especially those who are disabled, would sometimes find the routes unpleasant to walk or ride along. The Council accepts that the condition of the ways should be improved.
28. However, I made my site visit in showery weather and early spring. There had been some bright preceding days, but they had followed times of heavy rainfall. I observed that the proposed parts of the bridleway and footpath were largely dry and firm. There were some patches of mud but my assessment was that these would not have made the route hazardous or impassable for any person who would normally be able – with or without assistance – to pass and re-pass on the ways.
29. I would not dismiss the objector's concerns simply on the basis of one site visit, but their assertions are not backed by evidence that the bridleway or the footpath is in such a poor condition as to be deemed inaccessible. Moreover, the original

lines of the routes crossed much the same riverside farmland, and there is no suggestion that they were better surfaced. The proposed line of the footpath would likely be easier for the public to pass because it does not cross water courses.

30. The Order was originally made on 1 July 2016, but withdrawn after the Byways and Bridleways Trust objected that the British Standard for the gates at the Watton Beck Bridge was specified in Part 3 but not Part 4. The Council determined that it would not be economically viable to comply with the British Standard, due to the ground conditions, and so the Order was re-made omitting any references to it.
31. It may be that gates which fall short of meeting the British Standard could afford the objector proper livestock control. If that proves not to be the case, or if required for accessibility and equality reasons, gates could still be installed which conform to the British Standard, even if the Order does not prescribe that. Since the Order is made with no limitations, it affords flexibility in respect of gates and stiles. The condition of the land would make it more expensive but not impossible to comply with the British Standard.
32. If works were required to bring the new sites of the bridleway or footpath "into a fit condition for public use", the Order would need to provide that those works are carried out before it comes into force; s119(3) of the HA80. My assessment is that, while some surfacing and gate improvements would be welcome, the proposed routes are "in a fit condition for public use" as they are.

Public safety

33. The objector asserts that members of the public using the bridleway and footpath on the proposed lines would be at risk from livestock. Sheep, stallions, mares and foals, plus some 150 head of cattle are grazed and can roam on and around the order lands; there are collecting pens near to Watton Beck Bridge. The objector and others may use heavy vehicles and machinery on and beside the proposed routes as described above.
34. However, it is not unusual for public rights of way to cross farmland, and users are expected to walk or ride through the countryside with care and attention. The original lines of the bridleway and footpath crossed or adjoined the same pasture, and the objector has not shown how or why the public could be put at greater risk if the ways were diverted to the proposed lines.

Conclusion

35. On the day of my visit, the bridleway and footpath could be accessed through unlocked gates on Watton Beck Bridge. It seems likely that, as the objector suggests, members of the public have used the proposed routes informally over the past 30-plus years. Since the Council received no objections to the Order on this basis, I conclude that the ways would not be substantially less convenient to the public as a result of their diversion.

Public enjoyment

36. The Council submits that the diversion would improve public enjoyment of the bridleway and footpath, since they would run along the bank tops between the River Hull and Beverley and Barmston Drain, affording pleasant views and sightings of wildlife. The original routes were also on bank tops, but it can be said that the diversion would not cause any loss of visual enjoyment. The objector has not submitted evidence to the contrary.

37. For the avoidance of doubt, I find that any risks from flooding, the condition of the ways and/or livestock and vehicles are not shown to be so serious on the diverted parts of the ways, compared to the existing lines, as to cause any unacceptable loss of public enjoyment of the bridleway or footpath.

Other land served by the existing rights of way and the land over which public rights of way would be created

38. The bridleway and footpath would not be diverted to land in different ownership or use, or land that has significantly different characteristics. The landowner does not object to the Order, and nor do any statutory undertakers or utility companies.
39. The objector has not argued that the closure of the existing routes has had any adverse effect on their ability to access or farm their land, or that this would be the case if the Order is confirmed. FP18 is not subject to this Order.
40. With regard to the proposed lines of the ways, the objector's concerns are largely related to private rights of way around their property – and to historic works and associated road closures by statutory undertakers. These matters are not relevant to the Order because they do not show that the new lines of the bridleway and footpath would have an adverse impact on the land crossed by those ways.
41. Under s29 of the HA80, the diversion of a public right of way must not inhibit use of land for agriculture. I see no evidence that this Order would inhibit the objector's ability to farm their lands, because their land has always been crossed by the bridleway and footpath. Diversion of the routes from one line to another across the same pasture would not alter the objector's liabilities – and the public using the ways would not have any right of trespass or to threaten or damage animals, property or land.
42. I find that the coming into operation of the Order would not have any unacceptable adverse effect on land served by the original rights of way, and the new ways created would have no unacceptable effect on the land over which they pass. There is no evidence that the value of the land would be depreciated, or the objector family would suffer damage by being disturbed in their enjoyment of the land, such that compensation issues arise under s119(5), s28 and s121(2) of the HA80.

Rights of Way Improvement Plan (ROWIP)

43. The Council's Rights of Way Improvement Plan 2008-2015 seeks to ensure that the DMS is accurate and up-to-date. Meeting this aim requires that anomalies on the DMS are resolved by, amongst other means, public path diversion orders. The objector does not dispute that the Order would comply with the ROWIP.

Points of termination

44. S119(2) of the HA80 provides that a public path diversion order shall not alter a point of termination of the path or way (a) if that point is not on a highway, or (b) otherwise to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
45. The bridleway if diverted would terminate – as it originally did – at BR23 and FP18. The objector suggests that part of FP18 runs in the bed of Beverley and Barmston Drain; the Council admits that part of this route is unavailable to use. So there is limited public access to the bridleway from the south, but that would be the case if the way is diverted or not, because this point of termination would not change. The Council intends to address the closure of FP18 separately.

46. One point of termination of the diverted footpath would be altered, but simply to another point on the bridleway. I find that the new point of termination, Watton Beck Bridge, would be substantially as convenient to the public as the original point on the bank of the Beverley and Barmston Drain. The northerly point of termination of the footpath at FP15 would not change.

OTHER MATTERS

47. Issues surrounding the impact of previous waterway and highway works on private access rights are outside of my remit.

CONCLUSIONS

48. I find that it is expedient to divert the long-obstructed Watton Bridleway No. 19 and Watton Footpath No. 11 in the interests of the public, and the ways would not be substantially less convenient to the public as a result of their diversion.

49. The evidence does not show that the diversion would cause any unacceptable loss of public enjoyment of the bridleway or footpath, or unacceptable adverse effects on the land crossed by the original or new lines of the ways. The Order would comply with the ROWIP, the points of termination of the bridleway would not change, and the one new point of termination of the footpath would be substantially as convenient to the public as that it would replace.

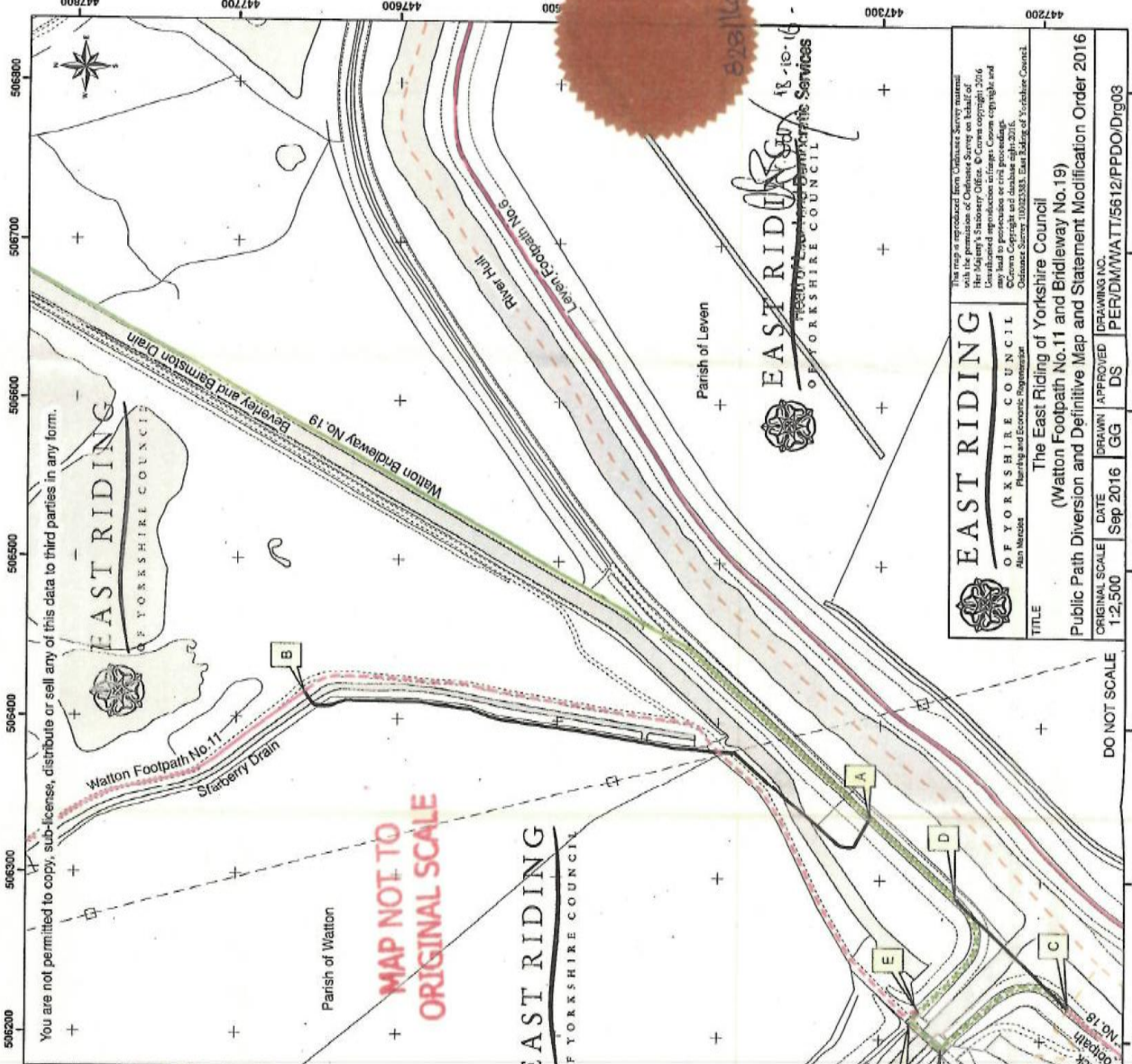
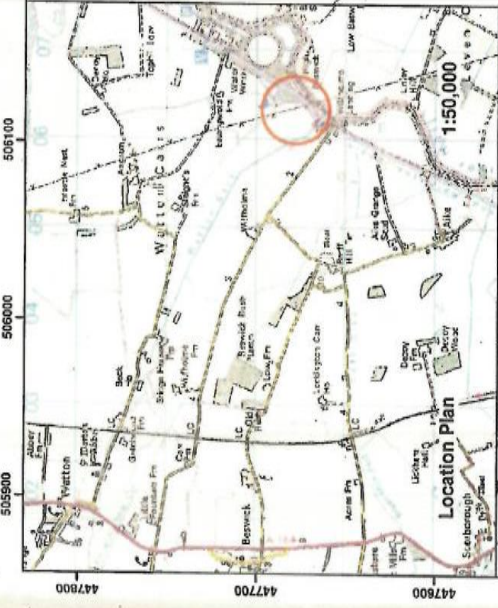
50. I conclude, with regard to all other matters raised, that it is expedient to confirm the Order. No modifications to the Order are proposed or required.

FORMAL DECISION

51. I confirm the East Riding of Yorkshire Council (Watton Footpath No. 11 and Bridleway No. 19) Public Path Diversion and Definitive Map and Statement Modification Order 2016.

Jean Russell

INSPECTOR



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MAP NOT TO ORIGINAL SCALE

- Legend**
- Bridleway to be created (C to F to G to D)
 - Footpath to be created (E to B)
 - Bridleway to be extinguished (C to D)
 - Footpath to be extinguished (A to B)
 - Existing Bridleway
 - Existing Footpath
 - Parish boundary



DO NOT SCALE

EAST RIDING OF YORKSHIRE COUNCIL
Planning and Economic Regeneration

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EAST RIDING OF YORKSHIRE COUNCIL
The East Riding of Yorkshire Council
(Watton Footpath No.11 and Bridleway No.19)
Public Path Diversion and Definitive Map and Statement Modification Order 2016

ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500	Sep 2016	GG	DS	PER/DM/WATT/5612/PPDO/Drq03

EAST RIDING OF YORKSHIRE COUNCIL
18-10-16
18-10-16